

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 CARL J. KUNASEK

Chairman

3 JIM IRVIN

Commissioner

4 WILLIAM A. MUNDELL

Commissioner

5
6 In the matter of

7 JAMES NEWTON DARWIN, II

8 400 N. Ronay Dr.

Spicewood, TX 78669

9 CRD # 1779045

10 Respondent.

) DOCKET NO. S-03349A-99-0000

) DECISION NO. _____

) **ORDER FOR RELIEF AND**
) **CONSENT TO SAME**

11
12 JAMES NEWTON DARWIN, II ("Darwin") elects to permanently waive his right to a hearing and
13 appeal under Articles 11 and 12 of the Securities Act of Arizona (the Act) with respect to this Order for Relief
14 and Consent to Same (Order); admits the jurisdiction of the Arizona Corporation Commission (Commission);
15 neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order; and consents to
16 entry of this Order by the Commission.

17 **II.**

18 **FINDINGS OF FACT**

19 1. Darwin whose last known address is 400 N. Ronay Dr., Spicewood, Texas 78669, is a
20 registered salesman in Arizona.

21 2. Darwin has been a registered securities salesman in Arizona since February 3, 1999. Darwin
22 is currently registered in Arizona with ProFutures Financial Group, Inc. ("ProFutures Financial").

23 3. From on or about February 21, 1992 to on or about April 22, 1998, Darwin held a Group 1
24 Life Accident Health and HMO license with the Texas Department of Insurance ("TDI"). Darwin further held
25 a Variable Contract Agents license with TDI from on or about May 31, 1996 to on or about April 22, 1998.
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1 4. Prior to his registration as a securities salesman in Arizona, Darwin held an appointment as a
2 general insurance agent with Commercial Union Life Insurance Company of America ("CU Life") pursuant to
3 his insurance licenses. During Darwin's appointment with CU Life, the company paid advance commissions
4 to insurance agents who submitted customer applications to purchase tax sheltered annuities.

5 5. From about January 1996 to about October 1996, Darwin designed and executed a scheme
6 to defraud CU Life whereby he created, forged, and submitted eighteen (18) fraudulent applications for tax
7 sheltered annuities to CU Life, for the purpose of obtaining advance commissions. When preparing said
8 applications, Darwin used the names of fictitious persons and fictitious addresses as purported applicants, and
9 forged the signatures on the applications. As a result of his scheme to defraud, Darwin received
10 approximately \$24,500.00 in fraudulently obtained commissions from CU Life and used the funds for his own
11 benefit.

12 6. Upon CU Life's investigation and discovery of Darwin's fraud as described above, Darwin's
13 appointment with CU Life was terminated for cause by CU Life on or about March 7, 1997, after allegations
14 were made that accused him of violating investment-related statutes, regulations, rules or industry standards of
15 conduct, and fraud or the wrongful taking of property. Darwin has since surrendered both of his insurance
16 licenses to TDI.

17 7. On or about September 15, 1998, Darwin filed a Form U-4 application with the Central
18 Registration Depository ("CRD") of the National Association of Securities Dealers ("NASD"), seeking to
19 become registered as a securities salesman of ProFutures Financial. Question 22N(1) of the then and
20 currently effective Form U-4 application requires applicants to disclose whether they have ever been
21 discharged after allegations were made that accused them of "violating *investment-related* statutes,
22 regulations, rules or industry standard of conduct." (emphasis in original). The explanation of terms section in
23 the Form U-4 application defines the term "investment-related" as "[p]ertaining to securities, commodities,
24 banking, insurance, or real estate . . ." (emphasis added.) Darwin answered "no" to Question 22N(1).

8. Question 22N(2) of the then and currently effective Form U-4 application requires applicants to disclose whether they have ever been discharged after allegations were made that accused them of “fraud or the wrongful taking of property.” Darwin answered “no” to Question 22N(2).

9. In January 1999, when Darwin applied for registration as a securities salesman in Arizona, the Form U-4 previously filed with the NASD on or about September 15, 1998, discussed in paragraphs 5 and 6 above, became a part of his registration application in Arizona.

10. Subsequent to the approval of his registration in Arizona, on or about March 15, 1999, Darwin amended his prior Form U-4 application with respect to ProFutures Financial to disclose “yes” answers to Questions 22N(1) and (2).

11. Darwin’s answers to Questions 22N(1) and (2) of the Form U-4 application that he filed on September 15, 1998, were incomplete, inaccurate or misleading.

III.

CONCLUSIONS OF LAW

12. Each of the preceding paragraphs is incorporated by reference.

13. Darwin’s conduct constitutes grounds for the revocation of Darwin’s registration as a securities salesman with the Commission pursuant to A.R.S. §§ 44-1962(A)(1) and (4) on the following grounds:

- (1) The application for registration of the salesman, based upon the information filed in the Form U-4, was incomplete, inaccurate or misleading; and
- (2) The salesman is lacking in integrity, is not of good business reputation or is not qualified by training or experience.

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IV.

ORDER

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

COMMISSIONER

BRIAN C. McNEIL
Executive Secretary

This document is available in alternative formats by contacting Cynthia Mercurio-Sandoval, ADA Coordinator, voice phone number 602/542-0838, E-mail csandoval@cc.state.az.us.

CONSENT BY JAMES NEWTON DARWIN, II TO THE ENTRY, BY THE CORPORATION
COMMISSION, OF AN ORDER TO REVOKE SECURITIES SALESMAN REGISTRATION AND
WAIVER OF HEARING

1. Respondent, James Newton Darwin ("Darwin") admits the jurisdiction of the Arizona Corporation Commission ("Commission") over the subject matter of this proceeding, and acknowledges that he has been fully advised of his right to a hearing to present evidence and call witnesses. Darwin knowingly and voluntarily waives all rights to a hearing before the Commission and all other procedures otherwise available under Article 11 of the Securities Act of Arizona (the "Act") and Title 44, The Arizona Administrative Code. Darwin acknowledges that the accompanying Order for Relief and Consent to Same ("Order") constitutes a valid final order duly rendered by the Commission.

2. Darwin knowingly and voluntarily waives any right he may have under Article 12 of the Act to judicial review by any court by way of suit, appeal or extraordinary relief resulting from the entry of this Order.

3. Darwin acknowledges and agrees that this Order is entered into freely and voluntarily and that no promise was made or coercion used to induce Darwin to enter into it.

4. Darwin acknowledges that he has been represented by counsel in this matter.

5. Darwin neither admits nor denies the Findings of Fact and Conclusions of Law contained in the Order. Darwin agrees that he shall not challenge their validity in any present or future administrative proceedings before the Commission or any other branch of state government concerning the denial or issuance of any licenses or registration required by the State in order to engage in the practice of any business or profession.

6. Darwin consents to the entry of this Order and agrees to be fully bound by its terms and conditions. Darwin further acknowledges that should he fail to comply with any and all provisions of this Order, the Commission may enforce the Order in Superior Court pursuant to A.R.S. § 44-2036(C) or impose

1 additional sanctions and costs and seek other appropriate relief subject to Darwin's right to a hearing pursuant
2 to the Act.

3 7. Darwin agrees that, as a part of the settlement reached herein, he will not apply for registration
4 as a securities dealer or salesman, or for licensure as an investment adviser or investment adviser representative,
5 under the Securities Act of Arizona or the Investment Management Act of Arizona, at any time in the future.

6 8. Darwin acknowledges that this Order resolves only alleged administrative violations of the Act
7 and that nothing contained in the Order purports to resolve any other issues which may exist between Darwin
8 and the State. Nothing in the Order shall be construed to restrict or preclude any other agency or officer of the
9 State of Arizona or its subdivisions from initiating other civil or criminal proceedings against Darwin, now or in
10 the future, that may be related to the matter addressed by the Order and the Consent. Nothing in the Order
11 shall be construed to restrict the State's right in a future proceeding to bring an action against Darwin from or
12 related to facts not set forth in the Order.

13 9. Darwin acknowledges that he has been informed and understands that the Commission or its
14 designee, at the Commission's sole and exclusive discretion, may refer or grant access to this matter, or any
15 information or evidence gathered in connection with this matter, to any person or entity having appropriate
16 administrative, civil or criminal jurisdiction. Darwin acknowledges that no representations . . .

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1 regarding the above have been made so as to induce him to enter into this Order, including the fact that no
2 promise or representation has been made by the Commission or its designee or staff with regard to any
3 potential criminal liability or immunity from any potential criminal liability.

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JAMES NEWTON DARWIN

7 SUBSCRIBED TO AND SWORN BEFORE me this ____ day of September, 1999, by JAMES
8 NEWTON DARWIN.

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NOTARY PUBLIC

12 My Commission Expires:
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